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US EPA RECORDS CENTER REGION 5



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Ms. Anne Tighe  
Cotsirilos & Crowley, Ltd.  
33 North Dearborn Street  
Suite #930  
Chicago, Illinois 60604

RE: Information Request  
Steve Martell

Dear Ms. Tighe:

I am writing in response to your letter of February 20, 1986 concerning the authority of the United States Environmental Protection Agency (U.S. EPA) to require compliance with the Information Request sent to you as counsel for Steve Martell. That request was sent pursuant to Section 104(c) of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. §9604(c) and Section 3007 of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. §5927. In your letter you question the U.S. EPA's authority to obtain information under CERCLA without previously identifying a release of hazardous substance(s); and under RCRA unless information sought relates to the period of 1980 to the present. Each of these interpretations of the statutes represent erroneously narrow readings. With this letter, the Agency reiterates its requests for information as presented in the initial Information Request.

Section 104(c) of CERCLA provides that the U.S. EPA may undertake certain activities "For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title...". In evaluating the need for some response action, the Agency must be able to perform investigations, including but not limited to, written requests for information to determine if a hazardous release is or has occurred. That authority is obvious not only in the plain meaning of the quoted language but also in the following provisions which are expansively written to enable the collection of information about hazardous substances well beyond merely information directly related to a release. Further, you assert that response activities are limited to instances in which there is a release; that is a misreading of



CERCLA. Section 104 specifically refers to "substantial threat of release" as does Section 106. In addition, Section 103 relates to notification of releases and penalties for failure to notify, obviously, the Agency must be in a position to obtain information to determine if a release exists in order to assess compliance with that provision. Each of those elements of CERCLA are "provisions of this title" as referred to in the opening language of Section 104(e) and therefore the Agency may seek information to assist in implementing those responsibilities. None of them requires a pre-determination of the existence of a release of a hazardous substance(s). As stated previously, the initial authority of the Agency to determine if response action is necessary also presupposes the authority to assess whether a release exists or has existed.

As to your objection to the RCRA portion of the information request, again you have misinterpreted the breadth of the U.S. EPA's authority. RCRA is not limited to just activities since 1980. For example, storage which began prior to 1980 but continues today would be within the RCRA jurisdiction and wastes first placed in the storage facility in 1979 which are still in storage would be regulated. The same holds true for treatment or disposal facilities where the activity may have started prior to 1980 but has continued beyond that date. Additionally, RCRA was amended and substantially expanded on November 8, 1984 so that Section 3004 now applies to solid waste management units, a term which includes hazardous waste disposal facilities, regardless of when waste was placed in the unit. Therefore to attempt to limit the Section 3007 authority to post-1980 activities is obviously incorrect.

You also assert that RCRA and the Constitution require some showing of basis for the Agency's need for the information requested. RCRA includes no such statement but rather applies to any person who generates, treats, stores, disposes, transports or otherwise handles hazardous waste. I think we are both quite aware that Steve Martell qualifies as such an individual. The sites and corporations identified in the initial Information Request are each derived from historical information obtained during investigations into the 9th Avenue Site, Paxton Landfill, U.S. Scrap and Midco I and II; I believe you are well acquainted with the records on those various Martell operations. Given the U.S. EPA's knowledge with respect to releases and threatened releases, as well as hazardous waste activities at those sites, the Agency has ample basis to request additional information as to Martell's activities.



With this letter, I am reiterating the U.S. EPA's request for information. If an inadequate, substantive response is not received by March 31, the U.S. EPA will evaluate its alternatives, including possible action to enforce the request. The Agency expects that you will submit a substantive response with respect to U.S. Scrap by March 21, 1986. If you have any questions with regard to this letter, please feel free to contact me.

Very truly yours,

Barbara Magel  
Associate Regional Counsel

bcc: Richard Boice

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